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NO. 84-1183

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JIMMY HOWARD SELF,

PETITIONER,

V.

STATE OF ALABAMA,

RESPONDENT.

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

BRIEF FOR RESPONDENT STATE OF ALABAMA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the trial court erred in refusing to allow the Defendant to have a witness read into the record the trafficking statute which indicated the appropriate punishment for the crime charged?

PARTIES

The caption contains the names of all parties to the proceedings in the courts below.

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OPINIONS BELOW

1. The decision of the Alabama Court of Criminal Appeals affirming the Petitioner's conviction was rendered June 26, 1984. For reference, said opinion is contained in "Appendix A" of the Petitioner's brief filed in this cause.

JURISDICTION

The jurisdiction of this Court is invoked by the Petitioner pursuant to 28 U.S.C. Section 1254 (1), and Article III, Section 2, of the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner is advancing his claim under the Sixth Amendment to the United State's Constitution which involved his right to confront and cross-examine witnesses.

STATEMENT OF THE CASE

The Petitioner in this cause was indicted by the Jefferson County, Alabama Grand Jury for the offense of trafficking in cocaine in violation of the Alabama Controlled Substances Act. Upon that indictment the case proceeded to trial in Jefferson County and a jury convicted the Petitioner on the indictment.

After being so convicted, the Petitioner was sentenced by the Court to a term of 15 years imprisonment without parole and fined the sum of $250,000.00.

The evidence against the Petitioner at trial was overwhelming and consisted of information provided to the authorities by informants. In addition, the Petitioner confessed to the charges against him in a statement given after an undeniably correct Miranda predicate.

REASON FOR DENIAL OF THE WRIT

THE TRIAL COURT MADE NO ERROR IN ITS REFUSAL TO ALLOW THE DEFENDANT TO HAVE WITNESS READ INTO THE RECORD THE TRAFFICKING STATUTE WHICH INDICATED THE APPROPRIATE PUNISHMENT FOR THIS OFFENSE.

It is the position of the Respondent in this cause that there was never any denial of the Petitioner's right to confront and cross-examine witnesses under the Sixth Amendment to the United State's Constitution. The cases relied on by the Petitioner to the affect that he has such a right are not disputed by the Respondent. It is, however, the position of the Respondent that while there is a right to cross-examination of witnesses that right is not unlimited. Such a right to cross-examination does not extend beyond the realm of relevancy. McElroy's Alabama Evidence, Sect. 136.01 (3rd ed. 1977).

The Petitioner's position in this matter is to the affect that the statute in question is a relevant subject for cross-examination simply because it was something that was read to the Petitioner before his statement was made. While such a fact situation might give some weight to the argument expressed by the Petitioner, there is nothing in this record to support those allegations. It is clear from a reading of the record (Sgt. Brook's testimony) that the reading of this statute in question was done after the confession. Therefore based on this record there can be no support for the Petitioner's position that the reading of the statute was a matter to be considered by the jury determining the voluntariness of the confession.

If it is assumed (as it must be from this record) that this statute was read to the Petitioner after his confession, then

that reading could not have affected the voluntariness of the confesssion itself.

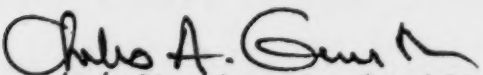
In addition, the full and complete Miranda predicate was shown before this confession was admitted into evidence. Sgt. Brook testified that there was no promise, reward, hope of reward, or any type of inducement offered to the Petitioner in order to invoke this confession.

Based on the foregoing, it must be said that there was no denial of the Petitioner's right to confront and/or cross-examine the witnesses against him.

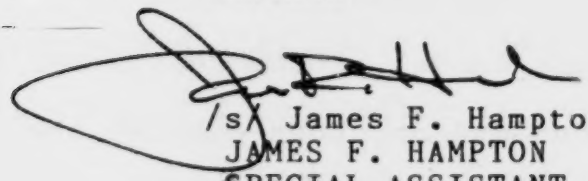
CONCLUSION

Based on the foregoing argument the Respondent would submit that the Writ of Certiorari requested by the Petitioner in this case is due to be denied.

Respectfully submitted,



/s/ Charles A. Graddick
CHARLES A. GRADDICK
ATTORNEY GENERAL OF
ALABAMA



/s/ James F. Hampton
JAMES F. HAMPTON
SPECIAL ASSISTANT
ATTORNEY GENERAL OF
ALABAMA

CERTIFICATE OF SERVICE

I, James F. Hampton, a Special Assistant Attorney General for the State of Alabama, a member of the Bar of the Supreme Court of the United States and one of the attorneys for the State of Alabama, Respondent, do hereby certify that on this the 21st day of February, 1985, I served three copies of the foregoing Brief and Argument in Opposition to the Petition for Writ of Certiorari to the Court of Criminal Appeals of Alabama on the Petitioner by placing same in the United States Mail, postage prepaid and properly addressed as follows:

Hon. Fred Blanton, Jr.
P.O. Box 15
Fultondale, Alabama 35068

/s/ James F. Hampton
JAMES F. HAMPTON
SPECIAL ASSISTANT
ATTORNEY GENERAL OF
ALABAMA